

By: Representative Guice

To: Banks and Banking

HOUSE BILL NO. 821
(As Sent to Governor)

1 AN ACT TO REENACT SECTIONS 75-67-501 THROUGH 75-67-537,
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE LICENSURE AND
3 REGULATION OF CHECK CASHERS BY THE DEPARTMENT OF BANKING AND
4 CONSUMER FINANCE; TO AMEND REENACTED SECTION 75-67-501,
5 MISSISSIPPI CODE OF 1972, TO DELETE THE DEFINITION OF THE TERM
6 "CONSIDERATION"; TO AMEND REENACTED SECTIONS 75-67-505 AND
7 75-67-509, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE APPLICANT
8 SHALL FILE THE APPLICATION AND BOND WITH THE COMMISSIONER OF
9 BANKING, INSTEAD OF THE LOCAL AUTHORITIES; TO AMEND REENACTED
10 SECTION 75-67-511, MISSISSIPPI CODE OF 1972, TO REVISE THE NET
11 WORTH REQUIREMENTS FOR A CHECK CASHERS LICENSE; TO AMEND REENACTED
12 SECTION 75-67-515, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
13 COMMISSIONER TO CHARGE EXAMINATION FEES AND ANNUAL LICENSE FEES;
14 TO AMEND REENACTED SECTIONS 75-67-507, 75-67-517 AND 75-67-519,
15 MISSISSIPPI CODE OF 1972, TO REMOVE THE AUTHORIZATION FOR CASHING
16 CHECKS FOR ANY CONSIDERATION OTHER THAN A FEE; TO AMEND REENACTED
17 SECTIONS 75-67-503, 75-67-513, 75-67-521, 75-67-523, 75-67-525,
18 75-67-527, 75-67-529, 75-67-531, 75-67-533, 75-67-535 AND
19 75-67-537, MISSISSIPPI CODE OF 1972, TO CHANGE REFERENCES TO CODE
20 SECTION NUMBERS TO REFERENCES TO "THIS ARTICLE"; TO AMEND SECTION
21 75-67-539, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE
22 REPEALER ON THE MISSISSIPPI CHECK CASHERS ACT; AND FOR RELATED
23 PURPOSES.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

26 SECTION 1. Section 75-67-501, Mississippi Code of 1972, is
27 reenacted and amended as follows:

28 75-67-501. This article shall be known and may be cited as
29 the "Mississippi Check Cashers Act."

30 SECTION 2. Section 75-67-503, Mississippi Code of 1972, is
31 reenacted and amended as follows:

32 75-67-503. The following words and phrases used in this
33 article shall have the following meanings unless the context
34 clearly indicates otherwise:

35 (a) "Appropriate law enforcement agency" means the
36 sheriff of each county in which the licensee maintains an office,
37 or the police chief of the municipality in which the licensee

38 maintains an office, or law enforcement officers of the Department
39 of Public Safety.

(b) "Attorney General" means the
40 Attorney General of the State of Mississippi.

(c) "Check" means any check, draft, money order,
42 personal money order, pre-authorized customer draft, or other
43 instrument for the transmission or payment of money as determined
44 by the Commissioner of Banking and Consumer Finance, but shall not
45 include travelers checks or foreign drawn payment instruments.

(d) A "check casher" means any individual, partnership,
47 association, joint stock association, trust or corporation,
48 excluding the United States Government and the government of this
49 state, who exchanges cash or other value for any check, draft,
50 money order, personal money order, or other instrument for the
51 transmission or payment of money, except travelers checks and
52 foreign drawn payment instruments, and who charges a fee therefor.

(e) "Commissioner" means the Mississippi Commissioner
54 of Banking and Consumer Finance, or his designee, as the
55 designated official for the purpose of enforcing this article.

56 * * *

(f) "Department" means the Department of Banking and
58 Consumer Finance.

(g) "Licensee" means any individual, partnership,
60 association or corporation duly licensed by the Department of
61 Banking and Consumer Finance to engage in the business of cashing
62 checks under this article.

(h) "Person" means an individual, partnership,
64 corporation, joint venture, trust, association or any legal entity
65 however organized.

(i) "Personal money order" means any instrument for the
67 transmission or payment of money in relation to which the
68 purchaser or remitter appoints or purports to appoint the seller
69 thereof as his agent for the receipt, transmission or handling of
70 money, whether such instrument is signed by the seller or by the

71 purchaser or remitter or some other person.

72 SECTION 3. Section 75-67-505, Mississippi Code of 1972, is
73 reenacted and amended as follows:

74 75-67-505. (1) A person may not engage in business as a
75 check casher or otherwise portray himself as a check casher unless
76 the person has a valid license authorizing engagement in the
77 business. A separate license is required for each place of
78 business under this article and each business must be independent
79 of, and not a part of, any other business operation. A check
80 cashing business shall not be a part of, or located at the same
81 business address with, a pawnshop, title pledge office and small
82 loan company. However, a licensed check casher may, as a part of
83 his business, sell money orders and operate a processing center
84 where utility bills are collected from the general public and
85 governmental payments are distributed. The commissioner may issue
86 more than one (1) license to a person if that person complies with
87 this article for each license. A new license or application to
88 transfer an existing license is required upon a change, directly
89 or beneficially, in the ownership of any licensed check casher
90 business and an application shall be made to the commissioner in
91 accordance with this article.

92 (2) When a licensee wishes to move a check casher business
93 to another location, the licensee shall give thirty (30) days'
94 prior written notice to the commissioner who shall amend the
95 license accordingly.

96 (3) Each license shall remain in full force and effect until
97 relinquished, suspended, revoked or expired. With each initial
98 application for a license, the applicant shall pay the
99 commissioner at the time of making the application a license fee
100 of Seven Hundred Fifty Dollars (\$750.00), and on or before
101 September 1 of each year thereafter, an annual renewal fee of Four
102 Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee
103 remains unpaid twenty-nine (29) days after September 1, the

104 license shall thereupon expire, but not before the thirtieth day
105 of September of any year for which the annual fee has been paid.

106 (4) Notwithstanding other provisions of this article, the
107 commissioner may issue a temporary license authorizing the
108 operator of a check casher business on the receipt of an
109 application for a license involving principals and owners that are
110 substantially identical to those of an existing licensed check
111 casher. The temporary license is effective until the permanent
112 license is issued or denied.

113 (5) Notwithstanding other provisions of this article,
114 neither a new license nor an application to transfer an existing
115 license shall be required upon any change, directly or
116 beneficially, in the ownership of any licensed check casher
117 business incorporated under the laws of this state or any other
118 state as long as the licensee continues to operate as a
119 corporation doing a check casher business under the license.
120 However, the commissioner may require the licensee to provide such
121 information as he deems reasonable and appropriate concerning the
122 officers and directors of the corporation and persons owning in
123 excess of twenty-five percent (25%) of the outstanding shares of
124 the corporation.

125 SECTION 4. Section 75-67-507, Mississippi Code of 1972, is
126 reenacted and amended as follows:

127 75-67-507. The provisions of this article shall not apply
128 to:

129 (a) Any bank, trust company, savings association,
130 savings and loan association, savings bank or credit union which
131 is chartered under the laws of this state or under federal law and
132 domiciled in this state.

133 (b) Any person who cashes checks at their face value
134 and does not charge the consumer a fee or otherwise receive any
135 consideration from the consumer.

136 (c) Any person principally engaged in the retail sale

137 of goods or services who, either as an incident to or
138 independently of a retail sale, may from time to time cash checks
139 for a fee * * *, not exceeding three percent (3%) of the face
140 amount of the check or Ten Dollars (\$10.00), whichever is greater.

141 SECTION 5. Section 75-67-509, Mississippi Code of 1972, is
142 reenacted and amended as follows:

143 75-67-509. To be eligible for a check casher license, an
144 applicant shall:

145 (a) Operate lawfully and fairly within the purposes of
146 this article.

147 (b) Not have been convicted of a felony in the last ten
148 (10) years or be active as a beneficial owner for someone who has
149 been convicted of a felony in the last ten (10) years.

150 (c) File with the commissioner a bond with good
151 security in the penal sum of Ten Thousand Dollars (\$10,000.00),
152 payable to the State of Mississippi for the faithful performance
153 by the licensee of the duties and obligations pertaining to the
154 business so licensed and the prompt payment of any judgment which
155 may be recovered against the licensee on account of charges or
156 other claims arising directly or collectively from any violation
157 of the provisions of this article. The bond shall not be valid
158 until it is approved by the commissioner. The applicant may file,
159 in lieu of the bond, cash, a certificate of deposit or government
160 bonds in the amount of Ten Thousand Dollars (\$10,000.00). Those
161 deposits shall be filed with the commissioner and are subject to
162 the same terms and conditions as are provided for in the surety
163 bond required in this paragraph. Any interest or earnings on
164 those deposits are payable to the depositor.

165 (d) File with the commissioner an application for a
166 license and the initial license fee required in this
167 article. * * * If applicant's application is approved, a check
168 casher license will be issued within thirty (30) days.

169 (e) Submit a set of fingerprints from any local law

170 enforcement agency. In order to determine the applicant's
171 suitability for license, the commissioner shall forward the
172 fingerprints to the Department of Public Safety; and if no
173 disqualifying record is identified at the state level, the
174 fingerprints shall be forwarded by the Department of Public Safety
175 to the FBI for a national criminal history record check.

176 (f) Complete and file with the commissioner an annual
177 renewal application for a license accompanied by the renewal fee
178 required in this article.

179 SECTION 6. Section 75-67-511, Mississippi Code of 1972, is
180 reenacted and amended as follows:

181 75-67-511. Each application for a license shall be in a form
182 prescribed by the commissioner, signed under oath, and shall
183 include the following:

184 (a) The legal name, residence and business address of
185 the applicant and, if the applicant is a partnership, association
186 or corporation, of every member, officer and director thereof.

187 However, the application need not state the full name and
188 address of each shareholder, if the applicant is owned directly or
189 beneficially by a person which as an issuer has a class of
190 securities registered under Section 12 of the Securities and
191 Exchange Act of 1934 or is an issuer of securities which is
192 required to file reports with the Securities and Exchange
193 Commission under Section 15(d) of the Securities and Exchange Act,
194 provided that the person files with the commissioner such
195 information, documents and reports as are required by the
196 provisions of the Securities and Exchange Act to be filed by the
197 issuer with the Securities and Exchange Commission.

198 (b) The complete address of the location at which the
199 applicant proposes to engage in the business of cashing checks.

200 (c) Other data and information the department may
201 require with respect to the applicant, its directors, trustees,
202 officers, members or agents.

203 (d) Sworn financial statements of the applicant showing
204 a net worth of at least Twenty Thousand Dollars (\$20,000.00) for
205 the first license. The applicant shall possess and maintain a net
206 worth of at least Twenty Thousand Dollars (\$20,000.00) for the
207 first license and at least Five Thousand Dollars (\$5,000.00) for
208 each additional license.

209 SECTION 7. Section 75-67-513, Mississippi Code of 1972, is
210 reenacted and amended as follows:

211 75-67-513. (1) Upon filing of an application in a form
212 prescribed by the commissioner, accompanied by the documents
213 required in this article, the department shall investigate to
214 ascertain whether the qualifications prescribed by Sections
215 75-67-509 and 75-67-511 have been satisfied. If the commissioner
216 finds that the qualifications have been satisfied and, if he
217 approves the documents so filed by the applicant, he shall issue
218 to the applicant a license to engage in the business of check
219 cashing in this state.

220 (2) The license shall be kept conspicuously posted in the
221 place of business of the licensee.

222 SECTION 8. Section 75-67-515, Mississippi Code of 1972, is
223 reenacted and amended as follows:

224 75-67-515. (1) The department may adopt reasonable
225 administrative regulations, not inconsistent with law, for the
226 enforcement of this article.

227 (2) To assure compliance with the provisions of this
228 article, the department may examine the books and records of any
229 licensee without notice during normal business hours. The
230 commissioner may charge the licensee an examination fee in an
231 amount not less than Two Hundred Dollars (\$200.00) nor more than
232 Three Hundred Dollars (\$300.00) per examination of each office or
233 location within the State of Mississippi plus any actual expenses
234 incurred while examining the licensee's records or books that are
235 located outside the State of Mississippi. However, in no event

236 shall a licensee be examined more than once in a two-year period
237 unless for cause shown based upon consumer complaint and/or other
238 exigent reasons as determined by the commissioner.

239 (3) Each licensee shall keep and use in its business any
240 books, accounts and records the department may require to carry
241 into effect the provisions of this article and the administrative
242 regulations issued under this article. Every licensee shall
243 preserve the books, accounts and records of its business for at
244 least two (2) years.

245 (4) Any fee charged by a licensee for cashing a check shall
246 be posted conspicuously to the bearer of the check before cashing
247 the check, and the fee shall be a service fee and not interest.

248 (5) Before a licensee deposits with any bank or other
249 depository institution a check cashed by the licensee, the check
250 shall be endorsed with the actual name under which the licensee is
251 doing business.

252 (6) All personal checks cashed for a customer by a licensee
253 shall be dated on the actual date the cash is tendered to the
254 customer.

255 (7) No licensee shall cash a check payable to a payee unless
256 the licensee has previously obtained appropriate identification of
257 the payee clearly indicating the authority of the person cashing
258 the check, draft or money order on behalf of the payee.

259 (8) No licensee shall indicate through advertising, signs,
260 billboards or otherwise that checks may be cashed without
261 identification of the bearer of the check; and any person seeking
262 to cash a check shall be required to submit reasonable
263 identification as prescribed by the department. The provisions of
264 this subsection shall not prohibit a licensee from cashing a check
265 simultaneously with the verification and establishment of the
266 identity of the presenter by means other than presentation of
267 identification.

268 (9) Within five (5) business days after being advised by the

269 payor financial institution that a check has been altered, forged,
270 stolen, obtained through fraudulent or illegal means, negotiated
271 without proper legal authority or represents the proceeds of
272 illegal activity, the licensee shall notify the department and the
273 district attorney for the judicial district in which the check was
274 received. If a check is returned to the licensee by the payor
275 financial institution for any of these reasons, the licensee may
276 not release the check without consent of the district attorney or
277 other investigating law enforcement authority.

278 (10) If a check is returned to a licensee from a payor
279 financial institution because there are insufficient funds in or
280 on deposit with the financial institution to pay the check, the
281 licensee or any other person on behalf of the licensee shall not
282 institute or initiate any criminal prosecution against the maker
283 or drawer of the personal check with the intent and purpose of
284 aiding in the collection of or enforcing the payment of the amount
285 owed to the check casher by the maker or drawer of the check.

286 SECTION 9. Section 75-67-517, Mississippi Code of 1972, is
287 reenacted and amended as follows:

288 75-67-517. Notwithstanding any other provision of law, no
289 check cashing business licensed under this article shall directly
290 or indirectly charge or collect fees * * * for check cashing
291 services in excess of the following:

292 (a) Three percent (3%) of the face amount of the check
293 or Five Dollars (\$5.00), whichever is greater, for checks issued
294 by the federal government, state government, or any agency of the
295 state or agency of the state or federal government, or any county
296 or municipality of this state.

297 (b) Ten percent (10%) of the face amount of the check
298 or Five Dollars (\$5.00), whichever is greater, for personal
299 checks.

300 (c) Five percent (5%) of the face amount of the check
301 or Five Dollars (\$5.00), whichever is greater, for all other

302 checks, or for money orders.

303 A licensee may not advance monies on the security of any
304 personal check unless the presenter attests that the check being
305 presented is drawn on a legitimate, open and active account.
306 Except as provided by Section 75-67-519, any licensee who cashes a
307 check for a fee shall deposit the check not later than three (3)
308 business days from the date the check is cashed.

309 SECTION 10. Section 75-67-519, Mississippi Code of 1972, is
310 reenacted and amended as follows:

311 75-67-519. (1) A licensee may defer the deposit of a
312 personal check cashed for a customer for up to thirty (30) days
313 under the provisions of this section.

314 (2) The face amount of any delayed deposit check cashed
315 under the provisions of this section shall not exceed Four Hundred
316 Dollars (\$400.00). Each customer is limited to a maximum amount
317 of Four Hundred Dollars (\$400.00) at any time.

318 (3) Each delayed deposit check cashed by a licensee shall be
319 documented by a written agreement that has been signed by the
320 customer and the licensee. The written agreement shall contain a
321 statement of the total amount of any fees charged, expressed as a
322 dollar amount and as an annual percentage rate. The written
323 agreement shall authorize the licensee to defer deposit of the
324 personal check until a specific date not later than thirty (30)
325 days from the date the check is cashed.

326 (4) A licensee shall not directly or indirectly charge any
327 fee or other consideration for cashing a delayed deposit check in
328 excess of eighteen percent (18%) of the face amount of the check.

329 (5) No check cashed under the provisions of this section
330 shall be repaid by the proceeds of another check cashed by the
331 same licensee or any affiliate of the licensee. A licensee shall
332 not * * * renew or otherwise extend any delayed deposit check.

333 (6) A licensee shall not offer coupon redemption, catalog
334 sales or other similar inducements as part of a delayed deposit

335 transaction.

336 (7) A licensee shall not charge a late fee or collection fee
337 on any deferred deposit transaction as a result of a returned
338 check or the default by the customer in timely payment to the
339 licensee; however, a licensee may receive any court-awarded fees.

340 (8) When cashing a delayed deposit check, a licensee may pay
341 the customer in the form of the licensee's business check or a
342 money order; however, no additional fee may then be charged by the
343 licensee for cashing the licensee's business check or money order
344 issued to the customer.

345 SECTION 11. Section 75-67-521, Mississippi Code of 1972, is
346 reenacted and amended as follows:

347 75-67-521. (1) The commissioner may, after notice and
348 hearing, suspend or revoke a license if he finds that:

349 (a) The licensee, either knowingly, or without the
350 exercise of due care to prevent the same, has violated any
351 provision of this article;

352 (b) Any fact or condition exists which, if it had
353 existed or had been known to exist at the time of the original
354 application for the license, clearly would have justified the
355 commissioner in refusing the license;

356 (c) The licensee has aided, abetted or conspired with
357 an individual or person to circumvent or violate the requirement
358 of this article;

359 (d) The licensee, or a legal or beneficial owner of the
360 license, has been convicted of a felony, or has been convicted of
361 a misdemeanor that the commissioner finds directly relates to the
362 duties and responsibilities of the business of check cashing.

363 (2) The commissioner may conditionally license or place on
364 probation a person whose license has been suspended or may
365 reprimand a licensee for a violation of this article.

366 (3) The manner of giving notice and conducting a hearing as
367 required by subsection (1) of this section shall be performed in

368 accordance with procedures prescribed by the commissioner in rules
369 or regulations adopted under Mississippi Administrative Procedures
370 Law, Section 25-43-1 et seq.

371 (4) Any licensee may surrender any license by delivering it
372 to the commissioner with written notice of its surrender, but that
373 surrender shall not affect the licensee's civil or criminal
374 liability for acts committed prior thereto.

375 (5) The commissioner may reinstate suspended licenses or
376 issue new licenses to a person whose license or licenses have been
377 revoked if no fact or condition then exists which clearly would
378 have justified the commissioner in refusing originally to issue a
379 license under this article.

380 (6) The appropriate local law enforcement agency shall be
381 notified of any licensee who has his license suspended or revoked
382 as provided by this article.

383 (7) The commissioner shall enforce the provisions of this
384 section.

385 SECTION 12. Section 75-67-523, Mississippi Code of 1972, is
386 reenacted and amended as follows:

387 75-67-523. The commissioner, or his duly authorized
388 representative, for the purpose of discovering violations of this
389 article and for the purpose of determining whether persons are
390 subject to the provisions of this article, may examine persons
391 licensed under this article and persons reasonably suspected by
392 the commissioner of conducting business which requires a license
393 under this article, including all relevant books, records and
394 papers employed by those persons in the transaction of their
395 business, and may summon witnesses and examine them under oath
396 concerning matters relating to the business of those persons, or
397 such other matters as may be relevant to the discovery of
398 violations of this article, including without limiting the conduct
399 of business without a license as required under this article.

400 SECTION 13. Section 75-67-525, Mississippi Code of 1972, is

401 reenacted and amended as follows:

402 75-67-525. Any person who engages in the business of check
403 cashing without first securing a license prescribed by this
404 article shall be guilty of a misdemeanor and upon conviction
405 thereof, shall be punishable by a fine not in excess of One
406 Thousand Dollars (\$1,000.00) or by confinement in the county jail
407 for not more than one (1) year, or both.

408 SECTION 14. Section 75-67-527, Mississippi Code of 1972, is
409 reenacted and amended as follows:

410 75-67-527. (1) In addition to any other penalty which may
411 be applicable, any licensee or employee who willfully violates any
412 provision of this article, or who willfully makes a false entry in
413 any record specifically required by this article, shall be guilty
414 of a misdemeanor and upon conviction thereof, shall be punishable
415 by a fine not in excess of One Thousand Dollars (\$1,000.00) per
416 violation or false entry.

417 (2) Compliance with the criminal provisions of this article
418 shall be enforced by the appropriate law enforcement agency, which
419 may exercise for that purpose any authority conferred upon the
420 agency by law.

421 (3) When the commissioner has reasonable cause to believe
422 that a person is violating any provision of this article, the
423 commissioner, in addition to and without prejudice to the
424 authority provided elsewhere in this article, may enter an order
425 requiring the person to stop or to refrain from the violation.
426 The commissioner may sue in any circuit court of the state having
427 jurisdiction and venue to enjoin the person from engaging in or
428 continuing the violation or from doing any act in furtherance of
429 the violation. In such an action, the court may enter an order or
430 judgment awarding a preliminary or permanent injunction.

431 (4) The commissioner may impose a civil penalty against any
432 licensee adjudged by the commissioner to be in violation of the
433 provisions of this article. The civil penalty shall not exceed

434 Five Hundred Dollars (\$500.00) per violation and shall be
435 deposited into the Department of Banking and Consumer Finance,
436 "Consumer Finance Fund."

437 (5) Any licensee convicted in the manner provided in this
438 article shall forfeit the surety bond or deposit required in
439 Section 75-67-509(c) * * * and the amount of the bond or deposit
440 shall be credited to the budget of the state or local agency which
441 directly participated in the prosecution of the licensee, for the
442 specific purpose of increasing law enforcement resources for that
443 specific state or local agency. The bond or deposit shall be used
444 to augment existing state and local law enforcement budgets and
445 not to supplant them.

446 SECTION 15. Section 75-67-529, Mississippi Code of 1972, is
447 reenacted and amended as follows:

448 75-67-529. The provisions of this article are severable. If
449 any part of this article is declared invalid or unconstitutional,
450 that declaration shall not affect the parts which remain.

451 SECTION 16. Section 75-67-531, Mississippi Code of 1972, is
452 reenacted and amended as follows:

453 75-67-531. Check cashers operating check cashing locations
454 in business as of July 1, 1998, shall have until September 30,
455 1998, to apply for a license under this article, and upon the
456 approval of the application, the commissioner shall grant a
457 license under this article.

458 SECTION 17. Section 75-67-533, Mississippi Code of 1972, is
459 reenacted and amended as follows:

460 75-67-533. The commissioner shall develop and provide any
461 necessary forms to carry out the provisions of this article.

462 SECTION 18. Section 75-67-535, Mississippi Code of 1972, is
463 reenacted and amended as follows:

464 75-67-535. Municipalities in this state may enact ordinances
465 which are in compliance with, but not more restrictive than, the
466 provisions of this article. Any existing or future order,

467 ordinance or regulation which conflicts with this provision shall
468 be null and void.

469 SECTION 19. Section 75-67-537, Mississippi Code of 1972, is
470 reenacted and amended as follows:

471 75-67-537. The commissioner may employ the necessary
472 full-time employees above the number of permanent full-time
473 employees authorized for the department for fiscal year 1999, to
474 carry out and enforce the provisions of this article. The
475 commissioner may also expend the necessary funds to equip and
476 provide necessary travel expenses for those employees.

477 SECTION 20. Section 75-67-539, Mississippi Code of 1972, is
478 amended as follows:

479 75-67-539. * * * Sections 75-67-501 through 75-67-539 shall
480 stand repealed on July 1, 2002.

481 SECTION 21. This act shall take effect and be in force from
482 and after its passage.